

## SENATE BILL No. 627

---

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 16-21.

**Synopsis:** Hospital staffing levels. Requires a hospital to file an annual staffing plan with the state department of health. Provides that the staffing plan is part of the department of health's: (1) report to the general assembly; and (2) consumer guide to hospitals. Provides for minimum hospital staffing requirements. Requires hospitals to maintain certain daily records. Establishes maximum time periods that a hospital employee may be on duty. Requires hospitals to prepare a work assignment policy. Allows the department of health or another person to take action for violations by the hospital. Prohibits a hospital from penalizing or retaliating against an employee who in good faith reports violations or suspected violations, participates in investigations, discusses the violations, or exercises the employee's rights. Provides that a hospital that takes adverse action against an employee for certain actions is liable for certain damages and costs. Allows the court to issue an injunction against a hospital for certain violations.

**Effective:** July 1, 2005.

---

---

Smith S

---

---

January 24, 2005, read first time and referred to Committee on Health and Provider Services.

---

---

C  
o  
p  
y



Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## SENATE BILL No. 627

A BILL FOR AN ACT to amend the Indiana Code concerning health.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 16-21-3-2 IS AMENDED TO READ AS  
2       FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. The state health  
3       commissioner may take action under section 1 of this chapter on any of  
4       the following grounds:

5               (1) Violation of any of the provisions of this chapter or of the  
6               rules adopted under this chapter.

7               (2) Permitting, aiding, or abetting the commission of any illegal  
8               act in an institution.

9               (3) Knowingly collecting or attempting to collect from a  
10              subscriber (as defined in IC 27-13-1-32) or an enrollee (as defined  
11              in IC 27-13-1-12) of a health maintenance organization (as  
12              defined in IC 27-13-1-19) any amounts that are owed by the  
13              health maintenance organization.

14              (4) Conduct or practice found by the council to be detrimental to  
15              the welfare of the patients of an institution.

16              **(5) Violation of any of the provisions of IC 16-21-10 or of the**  
17              **rules adopted under IC 16-21-10.**

2005

IN 627—LS 7852/DI 77+



C  
o  
p  
y

SECTION 2. IC 16-21-6-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 6.5. A hospital shall file with the state department the staffing plan that is required under IC 16-21-10-3 not more than one hundred twenty (120) days after the end of the hospital's fiscal year.**

SECTION 3. IC 16-21-6-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) The state department shall adopt rules under IC 4-22-2 necessary to carry out this chapter.

(b) The rules adopted under this section must include rules that establish a uniform system for completing the reports required under sections 3, ~~and 6~~, **and 6.5** of this chapter.

(c) The rules adopted under this section must provide that, to the greatest extent possible, copies of reports required to be filed with federal, state, and local agencies may be used by facilities in completing the reports required by this chapter.

SECTION 4. IC 16-21-6-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. Each year the state health commissioner or the commissioner's designee shall make a compilation of the data obtained from the reports required under sections 3, ~~and 6~~, **and 6.5** of this chapter and report in an electronic format under IC 5-14-6 the findings and recommendations to the general assembly not later than December 1 of the year the reports are filed. However, the commissioner is not required to incorporate a report that is required to be filed by a hospital with the state department less than one hundred twenty (120) days before December 1, but shall incorporate the report data in the report to be made the following year.

SECTION 5. IC 16-21-6-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) The state department shall annually publish a consumer guide to Indiana hospitals. The state department shall compile the data for the consumer guide from the relevant data required to be filed under sections 3, ~~and 6~~, **and 6.5** of this chapter and publish the data in an understandable format that assists the consuming public in making both financial and utilization comparisons between hospitals.

(b) The state department shall, upon request, provide to the public, at the state department's actual cost, copies of the consumer guide to Indiana hospitals published under subsection (a).

SECTION 6. IC 16-21-10 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

C  
o  
p  
y



**Chapter 10. Hospital Staffing**

**Sec. 1. This chapter applies to the following:**

- (1) A hospital licensed under this article.
- (2) A hospital operated under IC 16-22.
- (3) A hospital operated under IC 16-23.

**Sec. 2. A hospital must be staffed in a manner that provides sufficient and appropriately qualified staff in each department or unit in the hospital to provide the individualized care needed by the hospital's patients.**

**Sec 3. (a) A hospital shall file with the state department a certified staffing plan that is sufficient to provide adequate and appropriate delivery of healthcare services to patients for the following year. The staffing plan must meet the following requirements:**

- (1) Provide that registered nurses must constitute at least fifty percent (50%) of the direct care nursing in the plan.
- (2) Adequately meet any legal requirements concerning hospital staffing.
- (3) Use an approved system to address the fluctuations in actual patient levels of care and nursing care requirements that require increased staffing levels above the plan's minimum levels. The staffing plan must identify the assessment tool used to validate the system relied on in the plan.
- (4) Take into account other work, including discharges, transfers, admissions, and administrative and support tasks, that is expected to be done by direct care nurses in addition to direct nursing care.
- (5) Identify the process that will be used to document actual staffing on a daily basis within each department or unit.
- (6) Include an assessment of the accuracy of the hospital's prior annual staffing plan compared to the hospital's actual staffing needs.
- (7) Identify each nurse staff classification together with the minimum qualifications for each classification.
- (8) Be developed in consultation with:
  - (A) the direct care nursing staff within each department or unit; or
  - (B) if the staff is represented by a collective bargaining representative, the collective bargaining representative of the direct care nursing staff.
- (9) Ensure that functions that must be performed by a

**C  
o  
p  
y**



licensed nurse are not performed by unlicensed personnel.

(10) Incorporate at least the minimum direct care nurse-to-patient ratios established under section 4 of this chapter.

(b) The staffing plan must ensure that the assessment, nursing diagnosis, planning, intervention, evaluation, and patient advocacy functions of the nursing process are performed in the planning and delivery of care for each patient.

Sec. 4. The state department shall adopt rules that establish minimum, specific, numerical direct care nurse-to-patient ratios for each type of hospital nursing department, unit, and clinical area that must be incorporated into the staffing plan. However, if additional nursing staff is required, the hospital must staff at the higher staffing level.

Sec. 5. The state department shall adopt rules under IC 4-22-2 to prescribe the method by which the state department will approve a hospital's system required by section 3(a)(3) of this chapter.

Sec. 6. A nurse may not be assigned or included in the count of assigned nursing staff for purposes of compliance with the minimum staffing requirements in a nursing department, unit, or clinical area within the hospital without appropriate licensing, prior orientation, and verification that the nurse is capable of providing competent nursing care to the patients.

Sec. 7. (a) A hospital shall maintain accurate daily records that include the following information:

(1) The number of patients admitted, released, and present in each nursing department or unit within the hospital.

(2) The level of care required for each patient present in each nursing department or unit within the hospital.

(3) The identity and duty hours of each direct care nurse in each nursing department or unit within the hospital.

(b) A hospital shall maintain daily statistics, by nursing department and unit, of the cases of mortality, morbidity, infection, accident, injury, and medical error.

(c) All records required under this section must be:

(1) maintained for seven (7) years; and

(2) made available upon request to the state department and to the public.

However, the information released to the public may not contain the name or other personal identifying information, except for the patient's required level of care.

**C  
O  
P  
Y**



1        **Sec. 8. (a) This section does not apply to a work shift schedule or**  
 2        **overtime program established by a collective bargaining agreement**  
 3        **negotiated on behalf of the hospital employees by a bona fide labor**  
 4        **organization if adequate measures are included in the agreement**  
 5        **to ensure against excessive fatigue on the part of the affected**  
 6        **employees.**

7        **(b) Except during a state of emergency declared by the**  
 8        **governor, a hospital may not mandate or require a hospital**  
 9        **employee to be on duty in excess of the following:**

10        **(1) The scheduled work shift or duty period.**

11        **(2) Twelve (12) hours in a twenty-four (24) hour period.**

12        **(3) Eighty (80) hours in a fourteen (14) consecutive day**  
 13        **period.**

14        **(4) Seven (7) consecutive days without at least one (1)**  
 15        **consecutive twenty-four (24) hour period off duty within that**  
 16        **time.**

17        **(c) Except during a state of emergency declared by the**  
 18        **governor, a hospital employee may not be on duty in excess of**  
 19        **sixteen (16) hours in any twenty-four (24) hour period. A hospital**  
 20        **employee working sixteen (16) hours in any twenty-four (24) hour**  
 21        **period must have at least eight (8) consecutive hours off duty**  
 22        **before being required to return to duty.**

23        **Sec. 9. (a) A hospital shall adopt and distribute to the direct care**  
 24        **nursing staff a written policy that complies with the requirements**  
 25        **in this chapter and details the circumstances when a direct care**  
 26        **nurse may refuse a work assignment. The work assignment policy**  
 27        **must permit a direct care nurse to refuse an assignment under the**  
 28        **following circumstances:**

29        **(1) The nurse does not have the education, training, or**  
 30        **experience to:**

31        **(A) safely fulfill the assignment without compromising or**  
 32        **jeopardizing patient safety; or**

33        **(B) meet the patient's foreseeable needs.**

34        **(2) A nurse who has volunteered to work overtime and has**  
 35        **determined that the nurse's level of fatigue or decreased**  
 36        **alertness would compromise or jeopardize patient safety or**  
 37        **the nurse's ability to meet foreseeable patient needs.**

38        **(3) The assignment would violate this chapter.**

39        **(b) The work assignment policy must contain procedures for the**  
 40        **following:**

41        **(1) Reasonable requirements for prior notice to a nurse's**  
 42        **supervisor regarding the nurse's request and supporting**

**C**  
**O**  
**P**  
**Y**



reasons for being relieved of an assignment or continued duty.

(2) Where feasible, an opportunity for the supervisor to review the specific conditions supporting the nurse's request and to decide whether to remedy the conditions, to relieve the nurse of the assignment, or to deny the nurse's request to be relieved of the assignment or continued duty.

(3) A process that permits the nurse to exercise the right to refuse the assignment or continue to be on duty when the supervisor denies the request to be relieved if any of the following conditions exist:

(A) The supervisor rejects the request without proposing a remedy or the proposed remedy would be inadequate or untimely.

(B) The complaint and investigation process with the state department would be untimely to address the concern.

(C) The employee in good faith believes that the assignment meets conditions justifying refusal.

Sec. 10. (a) A hospital may not penalize, discriminate, or retaliate against an employee regarding compensation or terms, conditions, or privileges of employment, if the employee in good faith individually or in conjunction with another person:

(1) reports a violation or suspected violation of this chapter to a public regulatory agency, a private accreditation body, or management personnel of the hospital;

(2) initiates, cooperates, or participates in an investigation or proceeding brought by a regulatory agency or private accreditation body concerning matters covered by this chapter;

(3) informs an employee, a representative of the employees, a patient, or the public of a violation or suspected violation of this chapter or discusses a violation or suspected violation with an employee, a representative of the employees, a patient, or the public; or

(4) exercises the employee's rights under this chapter.

(b) An employee acts in good faith if the employee reasonably believes that:

(1) the information reported or disclosed is true; and

(2) a violation of this chapter has occurred or may occur.

Sec. 11. (a) The state department shall receive, investigate, and attempt to resolve complaints concerning violations of this chapter.

(b) The state department or a person may file a civil action for violations of this chapter.

C  
o  
p  
y



1       **Sec. 12. (a) A hospital may not discharge, demote, harass, or**  
 2       **take adverse action against an individual who:**

- 3               **(1) seeks to enforce this chapter; or**  
 4               **(2) testifies, assists, or participates in any manner in an**  
 5               **investigation, hearing, or other proceeding to enforce this**  
 6               **chapter.**

7       **(b) If an employee brings an action against a hospital for a**  
 8       **violation of subsection (a) and the employee prevails, the court**  
 9       **shall do the following:**

10           **(1) Award the employee:**

11               **(A) actual damages, including back pay in an amount equal**  
 12               **to the difference between the employee's actual earnings**  
 13               **and what the employee would have earned without the**  
 14               **hospital's violations;**

15               **(B) reasonable attorney's fees, court costs, and other costs**  
 16               **of the action; and**

17               **(C) if appropriate, punitive damages.**

18           **(2) If appropriate, enjoin the hospital from continuing to**  
 19           **violate this section and order the hospital to take actions**  
 20           **necessary to prevent future violations.**

21       **Sec. 13. The state department shall adopt rules under IC 4-22-2**  
 22       **to implement and administer this chapter.**

23       **SECTION 7. [EFFECTIVE JULY 1, 2005] (a) The state**  
 24       **department of health shall adopt rules under IC 16-21-10-4, as**  
 25       **added by this act, that require that a hospital's staffing plan must**  
 26       **incorporate, at a minimum, the following direct care**  
 27       **nurse-to-patient ratios:**

28           **(1) Pediatric recovery room - one to one (1:1).**

29           **(2) Operating room circulating nurse - one to one (1:1).**

30           **(3) Special procedures, including cardiac catheterization**  
 31           **laboratories, radiology, and endoscopy - one to one (1:1).**

32           **(4) Trauma - one to one (1:1).**

33           **(5) Burn unit - one to two (1:2).**

34           **(6) Critical care - one to two (1:2).**

35           **(7) Labor and delivery - one to two (1:2).**

36           **(8) Adult recovery room - one to two (1:2).**

37           **(9) Emergency room - one to three (1:3).**

38           **(10) Oncology/chemotherapy - one to three (1:3).**

39           **(11) Intermediate care unit - one to three (1:3).**

40           **(12) Telemetry - one to three (1:3).**

41           **(13) Mother/baby couplets and normal postpartum - one to**  
 42           **four (1:4).**

**C**  
**O**  
**P**  
**Y**





- 1           **(14) Pediatrics - one to four (1:4).**  
2           **(15) Psychiatric unit - one to four (1:4).**  
3           **(16) Adult medical surgical unit - one to six (1:6).**  
4           **(b) The state department of health may adopt direct care**  
5           **nurse-to-patient ratios for other hospital departments, units, and**  
6           **clinical areas not listed in subsection (a).**  
7           **(c) This SECTION expires July 1, 2007.**

**C**  
**O**  
**P**  
**Y**

